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Partners, Inc.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

JOHN B. BIVONA; SADDLE RIVER
ADVISERS, LLC; SRA MANAGEMENT
ASSOCIATES, LLC; FRANK GREGORY
MAZZOLA

Defendants.

Case No. 3:16-cv-1386

**RECEIVER'S
ADMINISTRATIVE
APPLICATION FOR AN
ORDER PURSUANT TO
LOCAL RULE 7-11 FOR THE
APPROVAL OF FEES FOR
THE PERIOD OCTOBER 1
TO DECEMBER 31, 2017,
FOR THE RECEIVER AND
COUNSEL**

Date: N/A
Time: N/A
Judge: Edward M. Chen

I. Background

On October 11, 2016, this Honorable Court issued an Order of Appointment of Receiver ("the Order") and thereby appointed Sherwood Partners, Inc. ("Sherwood") as Receiver in this matter. The Order also appointed John W. Cotton ("Cotton") of Gartenberg, Gelfand & Hayton LLP as Counsel to the Receiver. Previously the Receiver and his counsel submitted interim applications for fees and expenses for the time

1 periods October 11, 2016, to March 31, 2017 (See: Docket No. 215, First
2 Quarterly Fee Application filed on July 13, 2017, and approved on July
3 25, 2017); April 1 to June 30, 2017 (See: Docket No. 275, Second
4 Quarterly Fee Application filed on October 19, 2017 and approved, but
5 with a 20% holdback for Sherwood on *both* the first (retroactive) and
6 second fee applications, on November 16, 2017); and July 1 to
7 September 30, 2017 (See: Docket No. 303, Third Quarterly Fee
8 Application, filed on December 26, 2017 and approved by the Court on
9 January 25, 2018.) The total fees and expenses of the Receiver approved
10 by the Court and paid to date total \$409,849 and the total fees and
11 expenses of the Receiver's counsel approved by the Court and paid to
12 date are \$98,521. The total fees and expenses of the Receiver being
13 requested in this Fourth Quarterly Application (the "Application") are
14 \$125,796.89 and the total fees and expenses of the Receiver's counsel
15 requested in this Fourth Application, are \$33,902.00.

16 In this Application, Sherwood through its Senior Vice President
17 Peter Hartheimer ("Hartheimer"), requests that this Court approve its
18 Fourth Quarterly fees and expenses as well as that of its Counsel, for the
19 time period October 1, 2017 to and including December 31, 2017. The
20 Application consists of the accompanying Declaration of Peter
21 Hartheimer, the time records of Sherwood (Exhibit A to the Declaration
22 of Hartheimer), a narrative of the work performed by Sherwood
23 (Exhibit B to the Declaration of Hartheimer) and the SEC's Standard
24 Fund Accounting Record ("SFAR", Exhibit C to the Declaration of
25 Hartheimer). The Receiver also requests approval for the fees of his
26 counsel, John W. Cotton for the same time period. The Declaration of
27 John W. Cotton with accompanying billing statements from his firm

(Exhibit A to the Declaration of Cotton) also accompanies this Application.¹

II. The Fee Application of Sherwood

As the Declaration of Peter Hartheimer of Sherwood sets forth, the interim period for which it makes this Application is October 1, 2017 to December 31, 2017. During this time period, the personnel who worked on this matter, and their discounted hourly rates include Mr. Michael Maidy (\$595); Peter Hartheimer (\$510), Georgiana Nertea (\$295); Nicolas Hernandez (\$ 295) and Alexander Brandtneris (\$195). Sherwood's total charge for time and disbursements in this interim Application is \$125,796.89. This represents a total of 301.8 hours, or 100.6 hours per month. Hartheimer Decl., at ¶ 3.

Sherwood has applied a 15% reduction to its standard rate and has only used personnel appropriate to the level of work being undertaken. Hartheimer Decl., at ¶ 3. Sherwood has also billed all travel at one half the normal billing rate, as required by the SEC Guidelines to Receivers. Hartheimer Decl., at ¶ 3. Hartheimer has personally reviewed all the time spent by Sherwood personnel on receivership tasks and has attested to the accuracy and appropriateness of the time billed and has set forth the major work categories in which time was spent. Hartheimer Decl., at ¶¶ 3 and 4. Finally, Hartheimer has prepared the required SEC Standard Fund Accounting Report, or "SFAR", for the period covered by this Application. Hartheimer Decl., at ¶ 5.

¹ Exhibit A to the Declaration of Hartheimer may contain unilateral fact characterizations by Sherwood to which defendants reserve their right to object.

1 Hartheimer has broken down the total billed hours of 301.8 to the
 2 following organized task categories: Asset management (33.4 hours);
 3 Investor relations (96.0 hours); Records Management (6.1 hours); Case
 4 Support and Administration (134.5 hours); SEC support (11.4 hours)
 5 and Claims and litigation (20.4 hours). Hartheimer Decl., at ¶ 4.

6 **III. The Fee Application of Sherwood's Counsel**

7 As the Declaration of John Cotton of Gartenberg Gelfand & Hayton
 8 ("GG&H") sets forth, the period for which it makes its fourth interim fee
 9 application is October 1, 2017 to December 31, 2017. All time spent on
 10 Receivership legal matters were undertaken by Cotton alone, at a
 11 reduced billing rate of \$450 an hour. GG & H's total charge for time and
 12 disbursements in this Application is \$ 33,902. This represents a total of
 13 77 hours, or 25.6 hours per month. Cotton Decl., at ¶ 3. GG & H has
 14 applied a 15% reduction to its standard rate and has only used
 15 personnel appropriate to the level of work being undertaken. Cotton
 16 Decl., at ¶ 3. Cotton has personally reviewed all the time spent on
 17 receivership tasks and has attested to the accuracy and appropriateness
 18 of the time billed and has set forth the major work categories in which
 19 time was spent. Cotton Decl., at ¶ ¶4 to 6.

20 During the time period of this interim Application, the work
 21 performed by Cotton consisted of the following work categories:
 22 responding to and advising the Receiver (22.7 hours); responding to
 23 and meeting with the SEC concerning SRA IG investor group concerns
 24 and the Joint Plan of Distribution (8.4 hours); review, preparation of
 25 and filing court documents (31.7 hours); and responding to and
 26 attending investor and Defendants' counsel calls and related questions
 27 (13.2 hours). Cotton Declaration at ¶ 4.

1 **IV. All Parties Have No Objection to this Fee Application**

2 All the now remaining parties to this matter have indicated to
3 Sherwood's counsel pursuant to a meet and confer process that they do
4 not oppose this Application. At the request of the SRA Investors Group,
5 the accompanying proposed order has left blank the amount requested
6 by the Receiver, in order that the Court may, if it so determines as
7 necessary, apply any holdback amount it deems proper.

8
9 **V. Conclusion**

10 For the forgoing reasons, the Receiver and his counsel request
11 that the Court approve the Application for Fourth Quarterly Fees by
12 completing as to the Receiver's fee amount and then signing the
13 attached Proposed Order.

14
15 Dated: February 28, 2018

GARTENBERG GELFAND HAYTON
LLP

16
17 By: /s/ John W. Cotton

18 John W. Cotton
19 Counsel to the Receiver